

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 880 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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VIRMATIBEN HIRALAL JAIN

Versus

STATE OF GUJARAT

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Appearance:

MR HS MULIA FOR MR RC JANI for Petitioner

MR UA TRIVEDI ADDL PUBLIC PROSECUTOR for Respondent No. 1

MR JB DASTOOR for Respondent No. 2

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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 25/06/1999

ORAL JUDGEMENT

#. Rule. Mr.Trivedi, Ld. APP and Mr.JB Dastoor, learned advocate for the respondents waive service of rule. With the consent of the parties, this matter is taken for final hearing today.

#. Heard Mr.H.S.Mulia appearing for Mr.Jani, learned advocate for the petitioner, Mr. J.B.Dastoor and

Mr.Trivedi, learned APP for the State.

#. Shri Mulia has contended that the complaint filed at Mundra, Kutch is not maintainable for the reasons that the cheque is dishonoured on account of stop payment and therefore no offence under Section 138 of the Negotiable Instrument Act would be constituted. It is further contended that the transactions alleged to have been taken place at Kadi and therefore, Mundra Court will not have jurisdiction and hence the complaint may be quashed.

#. On the other hand, Mr.Dastoor contended that it is not only cheque which is the only basis of the complaint. He submitted that a complaint is not lodged under Section 138 of the Negotiable Instrument Act only but a Promissory Note was executed by the petitioner and the complaint is for offence under Section 406 and 420 of the Indian Penal Code also, and therefore, the Mundra Court will have jurisdiction. A notice on respondent No.2 is also served at Mundra indicates that the respondent No.2 is serving at Mundra. Therefore, the complaint would be maintainable at Mundra.

#. Mr.Trivedi, Ld. APP appearing for the State submits that an offence under Section 138 of Negotiable Instrument Act is not constituted at all. The execution of promissory note and filing of complaint at Mundra by the petitioner indicates a dispute of civil nature. The tenor of the notice also indicates a civil dispute. Under these circumstances, the complaint challenged in this petition would not be maintainable.

#. Considered the rival side contentions. At the outset, it is amply clear that the cheque was returned by the banker on account of direction of stop payment by the petitioner. It transpires that the cheque is dated 3rd February, 1998, whereas this direction for stop payment was issued on 3rd January, 1998 nearly 1 month prior thereto. The cheque is presented on 4-6-1998 and returned with the endorsement. The notice is served on 16th June, 1998 which is replied on 18th June, 1998 and the complaint is filed on 20th July, 1998. All these dates go to indicate that the complaint under Section 138 cannot be entertained, as offence is not constituted and requirements of this Section are not met with.

#. Further, a perusal of the papers available on record indicates that the complaint is also lodged under Section 406 and 420 of Indian Penal Code. As per the say of Mr.Dastoor, the basis thereof is a promissory note produced at Page 38-A of record. It does not indicate

the place of execution.

#. It is amply clear that there is a civil dispute between the parties resulted into drawing of promissory note and issuance of cheque possibly blank as can be seen from the date of cheque, the intimation by the drawer to the bank for the stop payment and presentation of cheque besides exchange of notice.

#. Having taken into consideration all these aspects, the complaint sought to be quashed by this petition, deserves to be allowed and hence the following order is passed;

##. The petition is allowed. The complaint No : 249 of 1998 is hereby quashed. Rule is made absolute accordingly.

Date : 25-6-1999 [A.L.Dave, J.]

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